

1  
2  
3  
4  
5  
6  
7  
8                   **UNITED STATES DISTRICT COURT**  
9                   **DISTRICT OF NEVADA**

10  
11     YOLIE PEREZ,

12       Plaintiff(s),

13     v.

14     COMMISSIONER OF SOCIAL SECURITY,

15       Defendant(s).

Case No.: 2:18-cv-02010-APG-NJK

**Order**

[Docket No. 6]

16     On October 22, 2018, the Court screened Plaintiff's complaint and found that she failed to  
17 state a claim. Docket No. 3.<sup>1</sup> In particular, the Court found that:

18     Most significantly, the complaint indicates that Plaintiff disagrees  
19 with a decision to deny benefits, but it is not clear which decision is  
20 being challenged (*i.e.*, an initial denial, a denial upon  
reconsideration, a denial by an ALJ, or a denial by the Appeals  
Council). As such, it is not clear that Plaintiff exhausted her  
21 administrative remedies within the Social Security Administration.  
Similarly, it is not clear when a final decision was made (if one has  
22 been made), so the Court cannot determine whether this action was  
commenced in a timely manner.

23     *Id.* at 2. The Court therefore dismissed the complaint without prejudice, and ordered that any  
24 amended complaint must cure these deficiencies. *See id.* at 2-3.

25  
26  
27  
28     

---

<sup>1</sup> As Plaintiff is proceeding *pro se*, the Court construes her filings liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 Plaintiff has now filed an amended complaint that continues to suffer from the same  
2 deficiencies. Docket No. 6. As such, the amended complaint will be dismissed. Given Plaintiff's  
3 *pro se* status, the Court will afford one additional opportunity to cure the defects identified herein.  
4 The Court reiterates that a complaint in this context must allege that the claimant exhausted her  
5 administrative remedies and timely sought relief in this Court. **Such a complaint should state**  
6 **whether the claimant's claims were denied by the Appeals Council and, if so, the date on**  
7 **which that denial was made.** If Plaintiff has not yet completed the administrative process (*i.e.*,  
8 an initial decision, a decision upon reconsideration, a decision by an ALJ, and then a decision by the  
9 Appeals Council), she must do that before seeking relief from this Court.

10 Accordingly, the Court hereby **ORDERS** as follows:

11 1. The amended complaint is hereby **DISMISSED** without prejudice. If Plaintiff believes  
12 she can cure the deficiencies noted herein, a second amended complaint shall be filed  
13 by November 21, 2018. If Plaintiff chooses to further amend the complaint, Plaintiff  
14 is informed that the Court cannot refer to a prior pleading in order to make a second  
15 amended complaint complete. This is because, as a general rule, amended complaints  
16 supersede the original complaint and previously-filed amended complaints. Local Rule  
17 15-1(a) requires that an amended complaint be complete in itself without reference to  
18 any prior pleading. Once a plaintiff files an amended complaint, the original complaint  
19 and any previously-filed amended complaints no longer serve any function in the case.  
20 Therefore, in an amended complaint, each claim and the involvement of each  
21 Defendant must be sufficiently alleged.

22 2. **Failure to file a second amended complaint as required herein will result in a**  
23 **recommendation that this case be dismissed without prejudice.**

24 IT IS SO ORDERED.

25 Dated: October 30, 2018

26   
27 Nancy J. Koppe  
28 United States Magistrate Judge